

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Respondent,

No. CR S-94-0168 GEB KJM

vs.

CHRISTOPHER RAY WITTMAN,

Movant.

ORDER

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Movant is a federal prisoner proceeding pro se with an action he has labeled a petition for a writ of habeas corpus under 28 U.S.C. § 2241. The action was originally filed in the United States District Court for the Central District of California. That court determined that petitioner was not entitled to bring such an action under the “savings clause” of 28 U.S.C. § 2255 ¶ 5 because the remedy was not “inadequate or ineffective to test the legality of his detention.” Wittman v. Banks, Civ. No. 06-573 JSL (JWJ), Memorandum And Order Transferring Action. The court rejected movant’s claims that he was entitled to bring a § 2241 action based on his contentions that he is “actually innocent” of the sentencing enhancements based on erroneous findings by the district court; that the district court committed “jurisdictional error” when it applied 18 U.S.C. § 3553(b), which mandated an illegal sentence; the district court committed a “structural error” when it misapplied the sentencing guidelines; and that he has a liberty interest

1 in the illegal detention. It then determined that it has no jurisdiction over the § 2255 action and
2 ordered the matter transferred to this district, the source of movant's conviction. This court is
3 bound by the Central District's determination. Christianson v. Colt Ind. Operating Corp., 486
4 U.S. 800, 816 (1988).

5 The court records reveal that petitioner has filed two previous motions under 28
6 U.S.C. § 2255. The first, filed February 23, 1998 and amended July 16, 1998, was denied on
7 January 5, 2000. The second, filed June 28, 2001, was denied on October 3, 2001 as an
8 unauthorized second motion. Accordingly, this third motion is successive and must be
9 authorized by the Court of Appeals. 28 U.S.C. §§ 2244(b)(3), 2255 ¶ 8; Rule 9, Rules
10 Governing Section 2255 Cases. Movant has not demonstrated he has received such
11 authorization.

12 Accordingly, IT IS HEREBY ORDERED that this case be transferred to the Court of
13 Appeals for the Ninth Circuit.

14 DATED: February 28, 2007.

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16 U.S. MAGISTRATE JUDGE

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